No. 80-924

In the Supreme Court of the United States

OCTOBER TERM, 1980

SHELL OIL COMPANY, ET AL., PETITIONERS

v.

DEPARTMENT OF ENERGY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENTS

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We submit this supplemental memorandum in response to petitioners' assertion, raised in their reply brief, that the petition in this case should be granted to resolve a "conflict between the circuits" resulting from the Third Circuit's recent decision in *SEC* v. *Wheeling-Pittsburgh Steel Corp.*, No. 80-1375 (3d Cir. Jan. 21, 1981) (en banc).

There is no conflict between the circuits. In *SEC* v. *Dresser Industries, Inc.*, 628 F. 2d 1368 (D.C. Cir. 1980) (en banc), cert. denied, No. 80-354 (Nov. 17, 1980), the court of appeals approved sharing by the SEC and the Department of Justice of certain information relevant to parallel grand jury and administrative investigations. *Wheeling-Pittsburgh* dealt with the unrelated issue whether a district court should enforce an SEC subpoena in the face of allegations that the SEC had succumbed to political pressure in issuing

the subpoena and had made no independent determination that an investigation was warranted. *Wheeling-Pittsburgh* did not consider the question decided in *Dresser*—whether the SEC has authority to coordinate with other enforcement agencies in securing and sharing information.[1]

This case, in contrast to *Wheeling-Pittsburgh* and *Dresser*, deals solely with the authority of the Energy Information Administration to coordinate its information gathering activities with those of other agencies of the federal government pursuant to the interrelated federal energy statutes described in our brief in opposition (Br. in Opp. 3-6). The Third Circuit's analysis of that issue has no relationship to its analysis of the subpoena enforcement issue in *Wheeling-Pittsburgh*, or the D.C. Circuit's analysis of interagency cooperation under the federal securities laws in *Dresser*.

Because there is no conflict in the circuits on the issue of statutory interpretation presented in this case, and because

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[1]In *Wheeling-Pittsburgh*, the Third Circuit "assume[d] * * * that the same standards are applicable to enforcement of SEC subpoenas as Internal Revenue Service summonses" (slip op. 11 n.5). This "assumption" can hardly be construed as a rejection of the holding in *Dresser* (628 F. 2d at 1378) that the SEC and Department of Justice may share information without infringing the rule announced by this Court in *United States* v. *LaSalle National Bank*, 437 U.S. 298 (1978). In any event, even if *Wheeling-Pittsburgh* could be construed somehow to conflict with *Dresser*, it is difficult to understand why the Court should grant certiorari in *this* case. The petition does not allege that the decision below conflicts with either *Dresser* or *Wheeling-Pittsburgh*.

that issue was correctly resolved by the court of appeals, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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